Brunswick Hospital Center, Inc. *and* **Local 803, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America** *and* **Veronica Lichtenstein,** *and* **Brunswick Nurses Association** *and* **Jane Agola.** Cases 29-CA-8165, 29-CA-8270, 29-CA-8484, 29-CA-8507, and 29-CA-8630[1]

December 10, 1982

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On September 28, 1981, Administrative Law Judge James F. Morton issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, the General Counsel filed exceptions and a brief, and Respondent filed a brief in opposition to the General Counsel's exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[2] and conclusions of the Administrative Law judge and to adopt his recommended Order.[3]

[1] On February 10, 1982, the attorney for Charging Party Jane Agola filed a motion to withdraw charges in Cases 29-CA-8507 and 29-CA-8630 on grounds that Jane Agola and her husband Dr. Agola, the subject of Case 29-CA-8630, had entered into a settlement agreement waiving any further relief and that the charge in Case 29-CA-8507 is duplicative of charges in Cases 29-CA-8165, 29-CA-8270, and 29-CA-8484. No interested party has opposed the motion. Accordingly, the motion to withdraw charges in Cases 29-CA-8507 and 29-CA-8630 is hereby granted.

[2] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

[3] The Administrative Law Judge found on the basis of the credited testimony of Police Detective Emery Schneider that Respondent Administrator Jules Stein told its guards while they were at the emergency ramp of the hospital that Renee Knicus and Linda Oliveri, two striking nurses, were troublemakers and agitators and that, no matter what the outcome of the strike would be, they would not be employed again by Respondent. The Administrative Law Judge held that the threats were made in the course of a "private discussion, presumably with supervisory officials of [Respondent's] security staff" and that they did not violate the Act because there was no intent to have them communicated to any employees. However, there is no evidence whatever to support his presumption as to the guards' supervisory status. The only reference thereto in the record is that the stipulated nurses unit, which was certified on April 8, 1980, excluded, *inter alia*, "guards and supervisors as defined in the Act." It cannot be presumed from this customary exclusionary language that the guards are supervisors. Accordingly, in the total absence of any evidence or any contention by Respondent that the guards are supervisors, we find that they are employees. Although the threats of discharge of the nurses were made to the guards, who are not members of the unit, the crucial fact is that both groups have employee status. Therefore, we find, contrary to the Administrative Law Judge, that the threats were coercive and violated Sec. 8(a)(1) of the Act.

Member Zimmerman finds it unnecessary to pass on this issue, since the Administrative Law Judge found an independent 8(a)(1) violation based on similar comments made by Stein which were overheard by Celeste Cornelia, an individual whose employee status is undisputed. An additional violation finding on this matter would, therefore, be cumulative and would not materially affect the result reached herein.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Brunswick Hospital Center, Inc., Amityville, New York, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, except that the attached notice is substituted for that of the Administrative Law Judge.

IT IS FURTHER ORDERED that the complaint be, and it hereby is, dismissed insofar as it alleges violations not expressly found.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT unlawfully interrogate employees as to their intent to participate in a lawful strike.

WE WILL NOT threaten to close our facility in order to discourage employees from participating in a lawful strike.

WE WILL NOT threaten not to reinstate striking employees to discourage them from continuing to participate in a lawful strike.

WE WILL NOT threaten employees with loss of employment or with reduced hours of employment to discourage them from participating in a lawful strike.

WE WILL NOT make disparaging comments which attempt to hold up to public ridicule employees who participate in a lawful strike.

WE WILL NOT photograph employees engaged in picketing activities.

WE WILL NOT discharge any employees because they participated in lawful picketing activities sponsored by a labor organization.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them in Section 7 of the Act.

WE WILL destroy all photographs and copies thereof (including both negatives and positives) taken by us of all picket line activities since the inception of the strike on July 11, 1980.

WE WILL offer to Veronica Lichtenstein reinstatement to her former position or, if it no longer exists, to a substantially equivalent position without prejudice to her seniority or her other rights and privileges and make her whole, with interest, for all losses she incurred as a result of her discriminatory discharge on July 16, 1980.

WE WILL reinstate each unfair labor practice striker within 5 days of an unconditional offer to return to work, dismissing if necessary any employees hired in their respective places.

BRUNSWICK HOSPITAL CENTER, INC.

DECISION

STATEMENT OF THE CASE

JAMES F. MORTON, Administrative Law Judge: On July 21, 1980, Local 803, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (herein called Local 803) filed the unfair labor practice charge in Case 29-CA-8165 against Brunswick Hospital Center (herein called Respondent). All dates hereafter are for 1980, unless otherwise stated. On August 27, Veronica Lichtenstein filed the unfair labor practice charge in Case 29-CA-8270 against Respondent. On December 3, the Brunswick Nurses Association (herein called the Association) filed the unfair labor practice charge against Respondent in Case 29-CA-8484. On December 12, and on February 6, 1981, respectively, Jane Agola filed the unfair labor practice charges in Cases 29-CA-8507 and 29-CA-8630 against Respondent. All of the above cases were consolidated for hearing by an order dated April 7, 1981. The hearing was held before me on May 4, 5, and 6, 1981, in Brooklyn, New York, and on May 7, 21, 22, and 26, 1981, in Mineola, New York.

Upon the entire record, including my observation of the demeanor of the witnesses, and with due consideration of the oral argument made by counsel for the General Counsel at the close of the hearing and of the briefs filed by Respondent and the General Counsel, I make the following:

FINDINGS OF FACT

I. JURISDICTION AND THE LABOR ORGANIZATIONS INVOLVED

The pleadings establish and I find that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that it is a health care institution within the meaning of Section 2(14) of the Act. I further find, based on the pleadings, that Local 803 is a labor organization within the meaning of Section 2(5) of the Act.

Respondent in its answer has denied that the Association is a labor organization as defined in the Act. The uncontroverted evidence establishes that the Association was formed in the fall of 1980 by several of the nurses employed by Respondent who were on strike against Respondent; that it conducted membership meetings at or about that time and obtained signed authorization cards from approximately 45 striking nurses employed by Respondent; that it has a president and a recording secretary; that it has adopted a constitution and bylaws whereby it is authorized to represent, for purposes of collective bargaining regarding wages, hours, and other terms and conditions of employment, nurses employed by Respondent; that it had conducted meetings of nurses employed by Respondent at which they had discussed matters such as the filing of unfair labor practice charges against Respondent, that it filed a petition in Case 29-RC-4846 to represent nurses employed by Respondent (the processing of that petition has been blocked by the charges in the instant case); and that Respondent had filed unfair practice charges against the Association as a labor organization in Cases 29-CP-437 and 29-CP-438 (which charges were withdrawn by Respondent on March 2, 1981). I find, based upon the foregoing, that the Association is an organization in which employees participate and which exists for the purpose of dealing with Respondent concerning, *inter alia*, wages, rates of pay, hours of employment, conditions of work, and other terms and conditions of employment for nurses in Respondent's employ.

II. ISSUES

The pleadings, as amended by motions granted and by stipulations received at the hearing, place in issue the following matters:

(1) Whether Respondent unlawfully interrogated certain of its registered nurses respecting their intention to strike or not in July.

(2) Whether Respondent threatened its nurses with reprisals to discourage their participating in a strike in July.

(3) Whether Respondent offered or granted benefits to its nurses to discourage them from striking.

(4) Whether Respondent unlawfully engaged in surveillance of picket line activities of its nurses.

(5) Whether Respondent threatened and otherwise coerced nurses subsequent to the start of the strike to discourage them from supporting the strike.

(6) Whether Respondent discharged Veronica Lichtenstein because she participated in the strike.

(7) Whether Respondent, by the totality of its conduct toward the strikers, discharged them from its employment.

(8) Whether the strike by nurses in Respondent's employ was caused or prolonged by Respondent's alleged unfair labor practices.

(9) Whether Respondent discharged Dr. Pietro Agola because of his wife's activities on behalf of Local 803 and the Association.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background*

Respondent is a privately owned hospital located in Amityville, New York. On April 8, Local 803 was certified as the exclusive collective-bargaining representative of the approximately 200 registered nurses employed by Respondent; Local 803 had been selected by a majority of those registered nurses in an election which had been conducted in March in Case 29-RC-4846. Excluded from the certified unit were all per diem registered nurses.

During the ensuing negotiations between Respondent and Local 803, agreement was not reached as to the hourly rates of pay for the unit employees, as to whether their employment would be subject to the provisions of a union shop, as to whether they would be scheduled to work so that the nurses would be off-duty on every other weekend, and as to an extra holiday. Local 803 served the requisite strike notices and scheduled the start of a strike by Respondent's registered nurses for Friday, July 11. About 80 of the registered nurses took part in that strike.

B. *The Alleged Unlawful Acts of Interference Prior to the Start of the Strike*

1. Uncontroverted accounts

The General Counsel presented the testimony of four registered nurses respecting coercive statements made by Respondent's supervisors which was not directly controverted. Margaret Lee, a registered nurse employed by Respondent, testified that her supervisor, Linda Cordero, had asked her in the week preceding the strike, which began on July 11, if she would be available to work on July 11; Lee testified that she simply responded that it was her day off. Antoinette O'Rourke testified that Respondent's relief supervisor, Pat Gabriel, had asked her on the day before the strike began whether she would come to work if called in and if there was a strike; O'Rourke testified that she responded that she would not and that Gabriel then remarked, "It will be a very interesting weekend." Babette Anderson, a registered nurse employed by Respondent who testified for Respondent respecting other matters, stated in the course of her cross-examination that Respondent's director of nurses, Cordero, had asked if she was going to be at work on the day the strike was scheduled to begin. Celeste Cornelia, another registered nurse employed by Respondent, testified that on Monday, July 7, her supervisor, Jane Peppard, had asked her whether she could be relied upon to show up for work in the event the strike took place on Friday, July 11, as scheduled; Cornelia testified that she responded that she was not sure as she had not made up her mind. Then, according to Cornelia, Peppard stated that she, Cornelia, should realize that in the event of a strike and if she did not come in to work on a day she was scheduled to work, work would not be available for her when the strike was over. Thereupon, according to Cornelia, she stated that, if that was the case, she would more than likely be in to work on the night the strike was scheduled to begin.

A fourth nurse, Jane Agola, testified that she heard Respondent's assistant director of nurses, Anna Jensen, ask several unidentified nurses, during the week preceding the start of the strike, whether they would be at work on July 11, the scheduled starting day of the strike.

At the hearing, the parties stipulated that Jane Peppard, Ann Merrick, Linda Cordero, Pat Gabriel, and Ann Jensen had been employed in July 1980 by Respondent and that they possessed supervisory authority as set out in Section 2(11) of the Act.

2. Controverted testimony

The General Counsel offered other testimony respecting discussions between registered nurses and supervisors and that other testimony was directly controverted by testimony adduced by Respondent. Thus, registered nurse Celeste Cornelia testified that at or about a month before the strike began she and Supervisors Ann Merrick and Patricia Bonser were talking about the possibility of the strike and that, during the course of that conversation, Merrick told Cornelia that, if she went out on strike, Respondent was only obligated to use her 1 day every 3 months as she was a per diem nurse. Merrick's version of that discussion is that she was asked by Cornelia what would happen to her as a per diem nurse if she went out on strike and that she told Cornelia that, as she was a per diem employee, she had to work only 1 day every 3 months to maintain her per diem status. Bonser did not testify.

Veronica Lichtenstein testified for the General Counsel that she had been employed in July 1980 as a part-time registered nurse and that she had a discussion then with Linda Cordero, Responent's director of nurses, respecting the strike. Lichtenstein testified that Cordero asked her if she could work on July 11 to which Lichtenstein responded that she could not as she had a dental appointment. According to Lichtenstein, Cordero told her that she was not making a threat but she knew that Lichtenstein needed her job. At that point, according to Lichtenstein, she asked Cordero what she meant by that remark and Cordero responded that funny things were happening around the hospital and that she, Cordero, thought that Lichtenstein should give up her weekend plans and come in to work. Lichtenstein, on cross-examination, admitted that part of Cordero's response, i.e., the reference that funny things were happening, was not contained in the pretrial affidavit she had signed. Cordero testified at first that all she remembered asking Lichtenstein was whether she could work on July 11, 12, and 13. She was then asked by Respondent's counsel whether she had ever been advised by Respondent's labor attorney as what she should say when asking nurses if they would come to work in the event of a strike. Cordero then responded that she had told Lichtenstein that the decision was hers to make but whatever decision she made nothing would happen to her. She stated that Lichtenstein then said that she could not work those days. Cordero stated that she did not ask Lichtenstein for a reason nor did Lichtenstein give her a reason for that response. Cordero denied, in response to

a leading question, that she told Cornelia that Cornelia should give up her weekend plans and come in to work.

Virginia Parmely, a registered nurse in Respondent's employ, testified that, a couple of days before the strike was scheduled to begin, Respondent's director of nurses, Cordero, asked her if she were going out on strike. Parmely stated that she advised Cordero that it was none of her business and that Cordero then told her that could mean her job. Parmely testified that she responded that was a decision each person has to make for themselves. Cordero testified that she remembered asking Virginia Parmely if she could work on July 11 and telling Parmely that the decision was hers and that, regardless of her decision, nothing would happen to her. She testified also that Parmely told her that she would not work and that she, Cordero, could not remember anything else.

3. Analysis

I credit the accounts given by the witnesses called by the General Counsel. Substantial parts of their overall testimony were not controverted by Respondent's witnesses. Further, some of the testimony adduced by Respondent to controvert certain of the testimony offered by the General Counsel's witnesses was developed in response to clearly leading questions and is entitled in my view to less weight. I also note that the testimony given by the General Counsel's witnesses did not appear to be given in mechanical fashion but rather their accounts had the ring of credibility. Lastly, I note that at least one point of possible variance in the accounts given by Cornelia and by Merrick was not that significant. In any event, I do not accept Merrick's account as it appeared to me that she modified it so that her actions would correspond to the advice given by Respondent's labor counsel, as the "answer" she stated she gave to Cornelia was not really responsive to the question that she testified had been asked of her and as Respondent did not call Supervisor Bonser to controvert Cornelia's account, or explain why it did not do so, despite the fact that Cornelia testified that Bonser was present at the time.

The credited testimony of Lee, O'Rourke, Anderson, Cornelia, Lichtenstein, Parmely, and Agola establish that Respondent's supervisors questioned its nurses as to whether they would participate in the strike and that they were not given assurances, while being questioned, that they need not fear reprisals. By such interrogation, Respondent interfered with, restrained, and coerced employees in the exercise of the rights guaranteed them under Section 7 of the Act.[1]

Further, Respondent had, by the statements made by Supervisor Peppard to Cornelia on July 7, warned that she would no longer be in Respondent's employ if she took part in the strike.

In addition, Cornelia's credited account establishes that Respondent, by the statements of Supervisor Merrick, had warned her that if she took part in the strike her work schedule could be substantially reduced when the strike ended. Lichtenstein's account discloses also that Respondent, by the statement made to her by Cordero, impliedly warned her that her job would be in jeopardy if she joined the strike. Parmely's account establishes that Cordero made a direct threat as to her continued employment by Respondent if she went out on strike.

C. *Alleged Unlawful Acts by Respondent After the Strike Began*

This section pertains to the testimony offered by the General Counsel, and controverted by Respondent that Respondent's administrator, Jules Stein, since the outset of the strike, participated in, and authorized others to commit, several coercive acts.

1. The detective's account

The General Counsel called as a witness a detective employed by the Suffolk County Police Department, namely, Emery Schneider. Schneider testified that he was present at Respondent's hospital, on the evening of July 11, with four detectives investigating an alleged rape case and a related assault and battery case. Schneider testified that, during the course of that evening, he had gone out on the south emergency ramp in order to smoke a cigarette and, while there, he overheard Respondent's administrator, Jules Stein, talking to a number of uniformed guards. He testified that Stein named two of the striking nurses who were picketing, Renee Knicus and Linda Oliveri, as troublemakers and agitators. Schneider testified that he heard Stein also state then that, no matter what the outcome of the strike would be, those two would not be employed again by Respondent. Schneider further testified that Stein then called Schneider's girlfriend, Noreen Cohen, a bitch and that Stein also stated that she, Cohen, would not be employed after the strike. Schneider testified that he then walked over to Stein, tapped him on the shoulder, identified himself and asked to speak with Stein away from the uniformed guards. Stein complied, according to Schneider, and he then asked Stein where Stein had received the information about Ms. Cohen. Stein responded, according to Schneider, that he had received it from three employees, one of whom he trusted. Schneider further testified that, later that evening, he told the two nurses on the picket line, Linda Oliveri and Renee Knicus, what Stein had said about them.

Noreen Cohen testified for the General Counsel as follows. In July, she was a nursing supervisor on the 3–11 p.m. shift and she was working in the Intensive Care Unit. Her direct examination was limited to the matters relating to the supervisory status of the nurses employed then by Respondent. That examination was terminated when Respondent joined in a stipulation as to the supervisory status of the nurses in question. Respondent, in its cross-examination of her, asked about discussions she had with Detective Schneider. She testified that she had discussed with him matters which had led up to the termination of her employment by Respondent and that she resigned from Respondent. She testified that she had resigned on July 12, as she was angry with the way Respondent was running the hospital at that time. She participated in the picketing following her resignation. In her testimony she alluded to the criticisms she had voiced to "people at the hospital" that the staffing ar-

[1] *Preterm, Inc.*, 240 NLRB 654 (1979).

rangements at the hospital during the strike in the specialty areas were most unsatisfactory and that the "people at the hospital" did not furnish her with satisfactory answers.

Jules Stein, Respondent's administrator, testified that he had no discussion with any detective on July 11 respecting any of the striking employees or about Supervisor Cohen. He stated that he was too busy to have gotten into any such discussion. He also testified that he had had a very amiable relationship with Supervisor Cohen.

Respondent also called as a witness, Leonard Cooper, Respondent's labor counsel. He testified that Stein never carried out a conversation concerning Noreen Cohen with anyone on the night of July 11 while he, Cooper, was present. Cooper also testified that he had made a concerted effort to be at the side of Jules Stein throughout the strike. It is apparent, however, from the overall record that there were times when he and Stein had been apart during the strike.

I credit the account of the General Counsel's witness, Emery Schneider. It does not appear to me that he had any motive to invent his account. It seems unlikely to me that he would offer a contrived account. It seems to me that, if he were going to lie, he would have embellished his account with stronger assertions of coercive conduct by Respondent. In making this credibility resolution, I also note that Jules Stein impressed me as an individual who is assertive, outspoken, and disinclined to conceal his feelings. I observe too that, notwithstanding Stein's statement that Respondent's relationship with Supervisor Cohen was amiable, she did resign a day after the strike started and that she did take part in the picketing. Lastly, I note that there is uncontroverted evidence in the record which discloses that Jules Stein exhibited personal animosity toward at least one of the striking enployees.

The credited testimony establishes that Respondent's administrator, Jules Stein, had stated, in Schneider's presence, (a) that two striking nurses Renee Knicus and Linda Oliveri were troublemakers and agitators and that they would not be employed again by Respondent, regardless of the outcome of the strike, and (b) that a supervisor, Noreen Cohen, who had complained about the staffing during the strike, was a bitch who also would not be employed when the strike ended. Schneider told Knicus and Oliveri of Stein's comments; Cohen participated in the strike after July 11.

Respondent contends that, even were Schneider's testimony found credible, no interference as to Section 7 rights can be found as there is no evidence that Stein intended that the remarks would have any impact on any of Respondent's employees. In particular, Respondent notes that the only one who stated he overheard Stein's remark was a nonemployee, that Cohen was a supervisor, and that Cohen's dissatisfaction was grounded in matters unrelated to employee rights.

The General Counsel contends that the statements by Stein as to striking nurses Knicus and Oliveri constituted unlawful threats of discharge which "were communicated to the strikers."

The Board has held that supervisors, in holding private discussions as to retaliatory steps against successful union efforts, do not violate the Act.[2] There must be evidence that an employer intended to have the coercive statements communicated to employees.[3] In applying these principles to the facts in the instant case, I note that the evidence indicates that Stein did not intend that his remarks were to be communicated. It appears he was having a private discussion, presumably with supervisory officials of his security staff, when detective Schneider tapped him on the shoulder and asked to talk to him about what he had overheard. In the absence of evidence respecting such intent, I find that Stein's statements were not independent acts of interference respecting employees' Section 7 rights. Nevertheless, Stein's remarks are to be considered in evaluating Respondent's intent to retaliate against employees who supported the strike.[4]

2. Alleged surveillance

The General Counsel contends next that Respondent engaged in unlawful surveillance of the picket line activities of its nurses who were on strike. In support of that allegation the General Counsel called witnesses to testify that, from the outset of the strike, Respondent's chief of maintenance, Nicholas Pagano, and one of the employees in his crew, namely, Arthur Sykes, a carpenter, filmed the picket line activities of the nurses and those accompanying them at regular intervals. Respondent's administrator, Jules Stein, acknowledged in his testimony that Pagano and Sykes had been asked by him to take photographs of the picket line. His testimony established that they constantly photographed the pickets and that Respondent has hundreds of pictures of the picket line as it wanted an accurate record of the picket line activities, including pictures of people crossing the picket line. Stein testified that there were some strangers who were accompanying the nurses engaged in picketing and that, prior to the strike and afterwards, there had been several unexplained instances of vandalism or like conduct. Stein also testified that he wanted photographs taken of strikers who themselves had carried cameras. With respect to the last point, the General Counsel's witnesses testified that, on the morning of the first day of the picketing, the son of one of the striking nurses had taken a camera to the picket line to take pictures; others of the General Counsel's witnesses testified that, on several occasions after the picket line was set up on July 11, several of the striking nurses had brought cameras with no film in them as apparently their way of "responding" to the photographing of the picket line by Respondent's chief of maintenance and his helper.

It is well established that, absent legitimate justification, an employer's photographing of its employees while they are engaged in protected concerted activities constitutes unlawful surveillance.[5] The evidence is clear, in the

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[2] *Montgomery Ward & Co., Incorporated*, 234 NLRB 13, at fn. 2 (1978).

[3] *Colecraft Manufacturing Company, Inc.* v. *N.L.R.B.*, 385 F.2d 998 (2d Cir. 1967).

[4] *Montgomery Ward & Co., Incorporated, supra.*

[5] *United States Steel Corporation*, 255 NLRB 1338 (1981), and cases cited therein.

instant case, that Respondent's administrator directed its chief of maintenance and his helper to photograph the strikers and that they were given wide discretion. Respondent sought to justify its actions by observing that on occasion several individuals on the picket line carried cameras and that it suspected the strikers of sabotage. Respondent took hundreds of photographs. In these circumstances, Respondent's defense must be rejected as the Board has consistently done so in similar cases.[6] Thus, Respondent's photographing of the strikers tends to interfere with the employees' right to engage in protected activities.[7]

3. Alleged statements by Jules Stein re Jane Agola and others

The General Counsel asserts that Respondent's administrator, Jules Stein, had engaged in coercive conduct on the evening of July 14. Celeste Cornelia testified for the General Counsel that she had worked on July 14 and was waiting for her husband in the emergency room waiting area when she observed Jules Stein talking to a security guard about 4 feet from her. She testified that Stein later made the following reference to the striking employees and especially to a striking nurse and now president of the Association. Cornelia testified that Stein said, "that damned Agola, she's out there. If it takes every last penny I have, I'll get her for this. Agola's ass is mine." Cornelia testified further that Stein said that Agola was number one on the "hit list" and that Stein said that he would just as soon see the hospital close than let "any one of those bitches out there back in here." Cornelia testified that she went out to the picket line and told Jane Agola what Stein had said. Cornelia thereupon ceased work and began to picket with the other striking nurses.

Agola also testified for the General Counsel. She stated that Cornelia had been trembling and crying when she, Cornelia, reported to her, Agola, on the night of July 14, what Stein allegedly had said about her. Agola's testimony was to the effect that Cornelia told her then that Stein had also stated that Linda Oliveri and Renee Knicus are also on his hit list and that Stein referred to Agola as a "little guinea gangster."

Cornelia testified for the General Counsel that, at some indefinite time when she was picketing, Stein also had called her a "goddamn guinea gangster." On cross-examination, she testified that Stein pointed at her when he made that remark and that he was then standing about 30 feet from her.

Respondent's administrator, Jules Stein, testified that he made none of the statements attributed to him by Cornelia or Agola. He also testified that he had no reason to be in the waiting area of the emergency room at any time during the course of the strike.

I credit the accounts of the General Counsel's witnesses. The account of Cornelia, as related above, respecting the circumstances under which she left work for Respondent and joined the picket line several days after it had been set up was believable. Further, and as noted previously, Stein impressed me as one who was angry with the striking nurses and as one who had no compunction about verbalizing that anger in the terms attributed to him by Cornelia and Agola.

Respondent, by reason of Stein's threat to close the hospital before letting any of the striking nurses return to work, interfered with, restrained, and coerced its employees as to their right to take part in activities protected by Section 7 of the Act. Stein's disparagement of employees Agola and Cornelia by, among other remarks, racial epithets also tended to impair the employees' rights under Section 7.[8]

4. Alleged offers of benefit

Cornelia further testified for the General Counsel that at or about 11 p.m. on the second day of the strike, Saturday, July 12, she had been waiting in the lobby of the emergency room for her husband. She had just completed her shift. Cornelia testified that Respondent's head of nurses, Barbara McGinley, approached her and two other nurses who were with her and asked whether they were full-time nurses or part-time nurses or per diem nurses. She was told that the three of them were per diem nurses. According to Cornelia, McGinley asked why they were working as per diem nurses when they could be working as part-time staff nurses and enjoy the fringe benefits that go with a part-time position. Cornelia related that they then told McGinley that they had previously asked to work as part-time staff nurses, to which McGinley said that she would see to it that they would become part-time staff nurses immediately.

Respondent called Barbara McGinley as its witness. She testified that she is the nursing administrator for Respondent and that she had been staffing coordinator until the end of July. She stated that she does not know anyone named Celeste Cornelia and that she does not know the names of most of the nurses employed by Respondent. She said that she has had discussions with nurses at various times about changing their status but does not recall any specific discussions.

I credit the account of Cornelia as it was a detailed account and as Respondent offered no personnel or payroll records to rebut Cornelia's testimony that her status and that of the two other nurses with her whom she identified by name had been changed immediately to part-time status as of July 12. In that regard, the evidence at the hearing establishes that part-time staff nurses received specific fringe benefits whereas per diem nurses did not.

Nevertheless, I do not find that the evidence is sufficient to establish that those changes were aimed at dis-

[6] *United States Steel Corporation, supra; Mediterranian Diner, Inc., t/a Bay Diner*, 250 NLRB 187 (1980); *Larand Leisurelies, Inc.*, 213 NLRB 197 (1974).

[7] Respondent's reliance on the Board's holding in *Cavalier Division of Seeburg Corporation and Cavalier Corporation*, 192 NLRB 290 (1971), is misplaced as the facts in that case were materially different from those in the instant case.

[8] *Capriccios Restaurant, Inc.*, 249 NLRB 685 (1980); *F.W.I.L. Lundy Bros. Restaurant, Inc.*, 248 NLRB 415, 422 (1980). Respondent urges that an appeal to racial prejudice is not violative of the Act, citing *Booth Inc., & Balcar Aluminum Foundry, a Division of Booth, Inc.*, 190 NLRB 675, 681 (1971). The instant case, however, involves a different issue—the ridicule of union supporters in the context of express threats.

couraging support for the Union. Rather, McGinley was obviously trying to staff the hospital with replacements for the strikers and there is no evidence that her offer was conditional on the employees renouncing any sympathy they may have had for the Union.

D. *The Alleged Discriminatory Discharge of Veronica Lichtenstein*

Lichtenstein testified as follows respecting her alleged discriminatory discharge. In the spring and summer of 1980, she had been working as a part-time registered nurse for Respondent. As recounted earlier and credited, she was asked by a nursing supervisor, Linda Cordero, whether she could work on Friday, July 11, the day the strike was scheduled to begin; she advised Cordero that she could not as she had a dental appointment scheduled for that day. Cordero then told her that while she was not making a threat she knew that Lichtenstein needed her job. When Lichtenstein asked her what that meant, Cordero replied that funny things are happening and that Cordero thought that Lichtenstein should give up her weekend plans at least and come in at work.

Lichtenstein had not been scheduled to work for a period of 5 or 6 days beginning at or about the time the strike was scheduled to begin. On the first day of the strike, July 11, Lichtenstein was at the picket line for about an hour. She went back to the picket line on one other day, at which time she stood there for about 30 minutes to find out what the status of the negotiations was. Sometime within the 5- or 6-day period that she was scheduled to be off work and during which the strike begun, Lichtenstein telephoned her supervisor, Cordero, and told her that she wanted to talk with her for just a minute. Cordero asked her what was wrong. Lichtenstein said that she was very upset with the whole situation and that it was making her sick and stated that she needed her job but at the same time she felt she had a loyalty to the nurses who were out on strike and that she did not know what to do. Cordero then asked her whether she was out with "picketers." Lichtenstein responded that she was not "picketing per se" but was there with the pickets during the first day for about an hour and on one other day when she had gone to the picket line to find out what was going on. Cordero, according to Litchenstein, told her that she was really needed by Respondent and that she should consider coming to work. Lichtenstein replied that she could not do any extra work but could do what she was assigned to do prior to the strike. Cordero told her not to worry about it but come in. Lichtenstein said she would be in to work on the following day. She did not come in the next day. Her husband apparently telephoned Respondent and submitted an excuse for her absence. On the following day, July 16, Lichtenstein reported for work and "clocked in." She reported to Cordero to find out where she was to be assigned to work; she also had with her a letter which stated that she was giving "four weeks" notice of her intent to resign, effective August 16. Lichtenstein gave Cordero that letter and said she was going to work the next 4 weeks and thus was giving Respondent the customary 4 weeks' notice. Cordero told her that she did not think that they were going to let her work. Lichtenstein asked who "they" were. Cordero responded that "they" were Jules Stein and Barbara McGinley. Lichtenstein asked again what she meant by saying that she, Lichtenstein, could not work. Cordero told her to wait a minute and to go and see the director of nurses, Mrs. Jensen. Lichtenstein and Cordero then went to see Jensen. Cordero told Jensen that she had a letter of resignation from Lichtenstein but that Lichtenstein intended to work for 4 weeks. Jensen advised that she was not getting involved with this and told Cordero to go see Barbara McGinley about it. Lichtenstein was instructed to sit in the waiting room while Cordero left to speak with McGinley. About 20 minutes later, Cordero returned and told Lichtenstein that she could not let her work and that "they" were not going to let her work. Lichtenstein said that, in effect, she was fired. Cordero told her that she could not do that to her. Lichtenstein asked her what she would call it, since she, Lichtenstein, could not work and did not have a job. Cordero told her that she, Lichtenstein, had abandoned her job. Lichtenstein responded that she had not abandoned her job, that she was scheduled to work and that she was there to work as she punched in to work and as she had a uniform. Cordero stated to her that she was "out with the picketers." Lichtenstein stated that that took place on her days off and that she could do what she wanted to on her free time. Cordero asked her, "what about yesterday?" Lichtenstein responded that she had been sick then, that she was not out on the picket line on that day and that Cordero could check that out from the pictures taken by Respondent of the previous day's picketing. Cordero told her that all she could say was that they were not letting her work and that she could not work. At that point, Lichtenstein left Respondent's facility.

Lichtenstein further testified that the letter of resignation she submitted had been signed by her and that, after she had been told by Cordero that she would not be allowed to work for the 4-week period, she, Lichtenstein, added a postscript which read, "please make this effective immediately then." Lichtenstein stated that she then crossed that out because she realized she did not want to resign immediately but wanted to work the 4 weeks. She stated that she was upset about everything and she then tore off the postscript and handed back the top portion of the original letter to Cordero. That letter was received in evidence.

Lichtenstein testified further that, in January 1981, she left a written request with Respondent, "for all monies coming" to her and as a result received payment for all her fringe benefits.

Cordero testified as follows for Respondent. When she met with Lichtenstein on the day that Lichtenstein handed her her resignation, she advised Lichtenstein that she, Cordero, would have to speak with Nursing Administrator Barbara McGinley, as McGinley was in the process of getting replacements. She told Lichtenstein that she was just going to telephone McGinley. Lichtenstein then told her that she had a letter of resignation and handed it to her. Cordero did not read the letter. Cordero tried to reach McGinley by telephone but was unable to locate her and, when she returned to tell Lich-

tenstein this, she found that Lichtenstein had left the building. Cordero stated that she reported to payroll simply that Lichtenstein had resigned.

Nursing Administrator McGinley testified as follows. Cordero had told her that Lichtenstein had reported to work and that, while Cordero had tried to contact her, McGinley, Lichtenstein had left. McGinley quoted Cordero as saying that she, Cordero, assumed that Lichtenstein had resigned as she had a letter of resignation or something in her hand at that time.

I credit Lichtenstein's account. Her testimony that she was there to work was corroborated by McGinley. There was no denial that she had advised Cordero that she was there to work for 4 weeks and that she was giving Respondent the "customary four weeks notice." Lichtenstein's account as to her becoming upset when advised that she could not work such that she wrote a postscript that she was then resigning immediately and her further account that she thereupon crossed that out and then tore off that part of the sheet so that the letter of resignation would be neat is believable. It is unlikely, in my judgment, that she would have concocted that whole account. Further, I do not view McGinley's testimony to the effect that she was busy trying to fill the various open slots caused by the strike to be consistent with her testimony that she, in effect, casually accepted Cordero's statement that Lichtenstein had resigned the same day she had reported to work. It seems to me that, if Respondent was so anxious to obtain nurses on a nondiscriminatory basis, she would have had Cordero pursue the matter further with Lichtenstein in an effort to persuade her to work and that she would not have so easily assumed that Lichtenstein had resigned immediately and without the "customary" 4 weeks' notice.

The credited testimony of Lichtenstein discloses that she was discharged by Respondent on July 16 from her employment as a nurse because she had engaged in picketing and other activities in support of Local 803 and the discredited testimony of Respondent's supervisors indicates clearly that the reason Respondent proffered for not employing her on and since July 16 was pretextual.

E. *The Alleged Discriminatory Discharges of the Striking Nurses*

1. Contentions

The General Counsel contends that Respondent, by the totality of its acts, discharged the nurses who participated in the strike which began on July 11. Respondent denies that any of the striking nurses were discharged. In addition to the statements made by Respondent's administrator, Jules Stein, to Celeste Cornelia as recounted above and other conduct by Respondent's supervisors which interfered with the nurses' Section 7 rights, also as recounted above, the General Counsel relies on the following five factors to support the allegation that the strikers had been discharged.

First, the General Counsel cites the testimony adduced from a UPI reporter and related testimony as supportive of the discharge allegation. Secondly, the General Counsel urges that the manner in which Respondent informed the striking nurses that their health insurance benefits were discontinued was, in context, a clear indication to them that they had been discharged. Thirdly, the General Counsel placed in evidence worksheets to show that the names of the striking nurses had been removed therefrom, and that that fact further demonstrates that Respondent had terminated the employment status of the strikers. The fourth factor cited by the General Counsel has to do with the manner in which Respondent prepared the payroll for July 25 and disbursed paychecks to the strikers on that date. Lastly, the General Counsel observes that Respondent restricted the strikers' mode of access to a public hearing held on its premises and argues that that conduct clearly supported the assertion that the strikers had been discharged.

2. Applicable principles

In considering the issue as to the employment status of the striking nurses, the following principles must be taken into account.

It has been stated that the law relating to the discharge of strikers is marked by subtle distinctions and that it is sometimes difficult to determine whether an employer has discharged a striker.[9] Each case requires an examination of the facts.[10] In determining whether or not a striker has been discharged, the events must be viewed through the striker's eyes and not as the employer would have viewed them.[11] The test to be used is whether the acts reasonably led the strikers to believe they were discharged.[12] If those acts created a climate of ambiguity and confusion which reasonably caused strikers to believe that they had been discharged or, at the very least, that their employment status was questionable because of their strike activity, the burden of the results of that ambiguity must fall on the employer.[13] The essential facts relevant to the discharge are now set forth.

3. Chronology; independent acts of animus

The General Counsel notes for consideration the testimony discussed above respecting threats made by Respondent's supervisors to nurses prior to and at the start of the strike. It is unnecessary to restate my findings thereon.

Approximately 81 of the 200 nurses, who were employed by Respondent and who were represented by the Union, struck on July 11 and began picketing. Two of them (Babette Anderson and Asta Nonvales) participated in the strike on July 11 and then returned to work without incident on July 12. It appears that two others, named by the General Counsel's witnesses, also abandoned the strike and returned to work on the second day of the strike.[14]

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[9] *Lipsey, Inc.*, 172 NLRB 1535, 1547 (1968).

[10] *C & W Mining Co., Inc., and/or C & W Hauling Co., Inc.*, 248 NLRB 270, 273 (1980).

[11] *Pennypower Shopping News, Inc.*, 253 NLRB 85 (1980).

[12] *Famous Supply Company, Inc.*, 254 NLRB 768 at fn. 1 (1981); *Ridgeway Trucking Company*, 243 NLRB 1048 (1979).

[13] *Pink Supply Corporation*, 249 NLRB 674 (1980).

[14] The names of the other nurses who struck are listed on the documents received in evidence as G.C. Exhs. 8, 10, 16, 19, and 21. Ten employees named thereon (Barbara Delia, Mary Theresa Denton, Alice Do-

Continued

Respondent's labor counsel, Leonard Cooper, testified without contradiction that, on the day the strike began, he met with various reporters and told them that Respondent intended to hire replacements for the striking nurses. One of the General Counsel's witnesses testified that, on a "Monday," a news article to that effect was published in Newsday. From the context of the record testimony, it appears that the witness was referring to Monday, July 14. Newsday is a daily newspaper with the largest circulation in Long Island.

4. The testimony of the UPI reporter

The General Counsel called as a witness a correspondent for United Press International (UPI), Henry Logeman. He testified that he telephoned Respondent's administrator, Jules Stein, shortly after the strike had begun and, in the discussion they had then, Stein told him that it was his intention to fire the striking nurses and to close the hospital before he would take them back. Logeman testified that, on the basis of that discussion with Stein, he typed out a press release on the video display terminal in his office. The substance of that report was issued that same day, July 15, by UPI in a bulletin which recited that the administrator of Respondent had said that 45 nurses who had been striking for 4 days "will be fired." The account then identified Jules Stein as the executive assistant to Respondent's president and reported that he said that the striking nurses had already been replaced or would be replaced and that, as they had abandoned their patients and abandoned their jobs, he would close the hospital before he would take them back to work.

Stein, in his testimony, denied Logeman's account and stated instead that Logeman was the one who had referred to the strikers as having been discharged. Stein testified that he then corrected Logeman and informed him that the strikers were merely being replaced. I credit Logeman's account. He impressed me as being experienced and objective and it is unlikely, in my view, that he would deliberately ignore the correction Stein asserts he made or that he, Logeman, would have so grossly distorted Stein's account.

Respondent's labor counsel, Leonard Cooper, testified that he received a telephone call on the afternoon of July 15 from Henry Logeman in which Logeman told him that he understood that Respondent was firing all of the striking nurses. Cooper related that he then replied that Logeman was wrong as the nurses were not being fired but rather Respondent was attempting to replace them. Cooper stated that he explained to Logeman the difference between hiring replacements for the position vacated by the strikers and discharging strikers and that Logeman's response was simply that Respondent was really firing the striking employees. Logeman was not recalled to the witness stand to rebut Cooper's testimony.[15]

Two of the striking nurses testified for the General Counsel that they had heard news reports on July 15 over a local radio station and a local TV channel respectively to the effect that Respondent had said that the nurses on strike "will be fired." A third striking nurse testified that she heard a TV newscaster report on July 15 that Respondent had said that the striking nurses "are" fired.

Jane Agola, one of the striking nurses and one who was a very active Local 803 supporter, acknowledged in her testimony that UPI reporter Logeman had telephoned her and stated that he, Logeman, had received a call from Respondent's administrator, Jules Stein, in which Stein had stated that Respondent was not going to discharge the strikers but that Respondent intended to permanently replace them. Agola's testimony does not require me to credit Stein's account as to his discussions with Logeman. Rather, I infer that Stein telephoned Logeman after UPI had issued the news release discussed above.

5. Lichtenstein's discharge

The next relevant incident, from a chronological standpoint, involves the discharge of nurse Veronica Lichtenstein, as discussed above. To recount briefly, she had participated briefly in the picketing at the outset of the strike on days when she was not scheduled to be working and was discharged on July 16 when she reported for work with a written notice to Respondent that she would resign her employment in mid-August. I have found that her discharge on July 16 was based on her involvement in the picketing.

6. The discontinuance of the strikers' benefits

On July 16, Respondent's president sent notices to the striking nurses advising them that "effective immediately, all (their) benefits cease" and that they should make their "own arrangements for hospitalization and major medical coverage."

7. The July 25 paychecks

The next consideration the General Counsel relies upon to establish that the striking nurses were discharged pertains to the manner in which they were paid on July 25. At the hearing, the parties placed into evidence voluminous payroll records, including voided checks, canceled checks, computer printouts, and work schedules. To understand the import of the General Counsel's contention, some background information is essential. July 25 was the paydate for the payroll period in which the strike began.

Nurses accrue, in the course of their employment with Respondent, sick leave benefit's (s), vacation benefits (v), holiday pay (h), and another benefit, called "E" benefits, which may be accrued personal days. Sick leave benefits are paid obviously whenever a nurse is out ill; similarly, paychecks issued to nurses for the weeks they are on vacation are offset against the vacation benefits accrued by the respective nurses. If a nurse resigns from employment or is discharged or dies, and, at such time, there is a surplus in the nurse's sick leave account or the vaca-

herty, Marie Liotta, Barbara Maker, Anita Mannix, Angela Middleton, Ann C. Miller, Kathleen Schmidt, and Dolores Unlauft) were not identified as having picketed but they were recorded by Respondent as absent from their assigned work beginning July 11. In the absence of evidence or contention to the contrary, I find that those 10 were among the striking employees on and after July 11.

[15] In the course of his testimony during the General Counsel's case-in-chief, Logeman testified on cross-examination that he had a discussion with Respondent's labor counsel but could not recall its substance.

tion account, or other accounts, those moneys are paid by separate check to the nurse (or to the estate in case of death).

On July 25, the 77 striking nurses were paid for the hours they had worked in the payroll period which included July 11, the day they began the strike. Separate checks were drawn for each of 19 of those 77 strikers and distributed on July 25. The names of those 19 are B. Delia, R. Ehlers, R. Grechen, R. Kittlesen, L. Korwek, M. Liotta, V. Lichtenstein, B. Maher, A. Mannix, D. McMillin, A. Middleton, A. Miller, J. O'Donnell, L. Smith-Oliveri, F. Parisi, K. Schmidt, T. Vernon, E. Wilson, and S. Wysokowski. The General Counsel has characterized the benefits checks issued to those 19 as "final" checks on the premise that such checks are issued only where a nurse is discharged, resigns, or dies. Respondent asserted that those benefit checks were paid to those 19 because they had requested them. The records Respondent proffered in support of that assertion showed the following:

1. (a) Ruth Kittlesen wrote a note on July 18 to Respondent's payroll supervisor, Rose Valente, asking to be paid for her 13 "E" days and her "July 4th HT." That note was marked as received by Respondent at 11 a.m. on July 18.

(b) On July 29, Kittlesen wrote again to Valente asking for the 2 weeks' vacation pay due her and also pay for her 12 "E" days due. That letter bears a July 30 stamp, presumably the day Valente received it.

(c) The July 25 canceled checks for Kittlesen indicate that she received one for $243 representing 4 workdays, 1 holiday, and 1 sick day, and a second check for $857.84 for 10 vacation days and 12 sick days. Those payments do not accord with either claim or, for that matter, with both. No explanation respecting the apparent discrepancy appears in the record. The foregoing data and the data set out for other strikers below are contained in the exhibits received in evidence, G.C. Exhs. 24, and 25, and Resp. Exh. 16.

2. Sue A. Wysokowski wrote Valente on July 18 stating that if possible she would like to be paid on July 25 for 2 weeks' vacation, 1 personal day, birthday, 2 holidays, 3 sick days; and she noted also that she worked 2 days during the applicable pay period. A notation, "pd. 8/3/80," appears on that letter, presumably made by someone in Respondent's payroll department. (On one of the canceled checks dated July 25 which was issued to Sue Wysokowski is the notation "2 Reg. 5V 2S" and on the other July 25 check issued her there is noted "5V 2H." It appears that Sue Wysokowski did not get paid on July 25 in accordance with her July 18 claim. The record does not disclose a reconciliation of her benefit accounts, other than perhaps what was represented by the notation "Pd 8/3/80" on her July 18 letter.)

3. Rita Grechen wrote Valente on July 21 asking if it was possible to be paid on July 25 for the 3 weeks' vacation pay due her. A record card in evidence contains notations which indicate that Grechen had accrued "3 wks vac, July 4th, 1980 Per, 4 sick day and 1 birthday." Grechen was issued a check on July for the net amount of $786.54; Respondent's records respecting that check read "18 V, other V void." The record contains no explanation thereof. On July 25, Grechen was issued a second check, one in the net amount of $108.06 and I presume that check reimbursed her for the hours she worked just prior to the start of the strike. In any event, the discrepancies between her claim and Respondent's notations as to the benefits she accumulated were not explained. It seems that, as of July 25, she had more benefits due her than the 2 weeks' vacation pay she sought.

4. Angela Middleton wrote a letter to Respondent's nursing administrator, McGinley, which was received by Respondent on July 24 and which stated that she, Middleton, was resigning and that she wished to be paid the "sick days and vacation pay owed" her. (On July 25 she was issued a check for $389.48, presumably for 9 vacation days and 1 sick leave day as a notation thereon in longhand reads "9V, 1S"; she was issued a separate check of $142.27 in July for the hours she worked in the applicable payroll period.)

5. Eva Wilson signed a typewritten statement dated July 25 which related that she had that day requested and received a check "for two weeks vacation for June, 1980." (She received two checks on July 25, one for $466.63 and the other for $152.78. The first check had the notation thereon "75V, other V canc".)

6. (a) Terry Vernon wrote a letter to Valente, received July 30, requesting payment for her 2 weeks' vacation, her unused sick leave, and 2 personal days. She was issued a check on July 25 for $398.09 with a payroll notation thereon stating "10V other V void" and another on that same date for $154.93. (There is no explanation as to why she was requesting on July 30 payment for her accrued 2 weeks of vacation when it appears she had already been issued a check for that account. It is likely that the request and the checks crossed in transit but it is possible too that she was seeking full vacation benefit pay.)

(b) On August 8 Respondent issued a third check to Theresa Vernon for $153.53. No explanation thereof appears in the record. Similarly D. McMillin, another of the 19, got a third check then.

7. Respondent submitted written requests received after July 25, i.e.—by Dorothy McMillin (received on July 31) requesting "pay for all (her) remaining time"; by Barbara Delia dated July 31 and which advised that, effective September 1, she was resigning her employment; by Frances Parisi dated August 1 which also stated that she "officially resigned" from her position and which requested moneys due from her "retirement plan"; by Rita Ehlers dated August 6 seeking vacation pay; by Anita Mannix dated August 19 stating that that was her "letter of resignation" and asking for a check for "all [her] time due"; by L. S. Korwek dated August 15 seeking her "two weeks vacation pay"; and by Linda Smith Oliveri received on August 21 requesting all vacation and sick leave pay to which she was entitled.

Comparing the material proffered by Respondent, discussed in items 1 through 7 above, with the names of the 19 strikers who received two checks each on July 25, it is noted that no written requests were submitted by some of them (M. Liotta, B. Maher, A. Miller, J. O'Donnell, and K. Schmidt), that one of the 19 (V. Lichtenstein)

had been discharged as noted above, that many of the 19 made written requests after July 25 and that some of those specifically resigned from Respondent's employ. It is also noted that 2 of the 19 got extra checks in August (Vernon and McMillin). Finally, I note that there is oftimes little correlation between the benefit payments requested and the amounts apparently disbursed therefor on July 25.

The General Counsel notes that, in addition to those 19 strikers who received two checks each on July 25, there were at least 25 other strikers who received paychecks on July 25 which included payment for not only the hours they actually worked in the applicable payroll period but also additional moneys for partial vacation pay, sick leave, holiday and/or other benefits. Counsel for the General Counsel set out in her brief a careful analysis of the relevant exhibits, including work schedules kept by Respondent's supervisors. There is no record or contention that any of those 25 strikers requested payment of any of their fringe benefits or had used their sick leave or had taken vacation time or otherwise were entitled on July 25 to receive payment of those benefits or that they had any reason then to expect such payment. Three other strikers testified without contradiction that they received payments which included similarly unexpected partial compensation for accumulated benefits. They did not receive payment of the balance until they later specifically requested such payment. Respondent attributes those partial payments on July 25 of accumulated benefits as mistakes which occurred at a time when its operations had been disorganized.

Respondent's administrator, Jules Stein, testified that its payroll supervisor had advised him that she had issued these payments of partial benefits because of a misunderstanding on her part. That evidence was offered and received simply for the fact that that statement was made to Respondent's administrator and not for its truth. Respondent was advised that it would be necessary to call the payroll supervisor as a witness before I could consider any such statement for its truth. Respondent did not call the payroll supervisor. For that matter, Respondent never did connect the testimony as to that statement to any relevant matter.

Respondent's administrator further testified that he instructed the payroll supervisor on July 24 to void any checks containing payment of benefits unless such payment was requested. Respondent's accountant testified that about 47 other checks had been drawn for issuance on July 25, that those 47 checks were payable to other strikers and represented payment of their accumulated benefits. His testimony established that those checks were not issued but that they were voided sometime in August. Those voided checks were received in evidence as Respondent's Exhibit 4. The net amounts thereon vary from several hundred dollars to about $1,400 and most are for accrued vacation pay (v) or sick leave pay (s) or both. Strangely, four of them were drawn payable to strikers Grechen, Korwek, Vernon, and Wilson who are among the 19 who had received two checks each on July 25. The check for Vernon was the *fourth* one made payable to her on July 25.

8. The work schedules

The General Counsel placed in evidence various work schedules which disclosed that, toward the end of the second week of the strike, the names of about 15 of the striking nurses were omitted therefrom for the shifts they had worked on prior to the strike and that the names of some other strikers were kept in an order different from the order in which they had been kept prior to the strike.[16] Respondent adduced evidence that the respective supervisory nurses prepared and maintained their own work schedules. Respondent observes that an examination of the schedules discloses that some supervisors noted that the striking nurses in their respective departments were "absent" each day from work and that other supervisors had simply deleted the names of the striking nurses from the active work schedules. According to Respondent's witness, the names of employees on vacation or disability leave are regularly omitted from work schedules in order to avoid the need of noting thereon repeatedly each day that such employees are on vacation or disability leave.

9. The joint commission meeting

The last evidentiary point relied on by the General Counsel respecting the contention that Respondent had "discharged" the striking nurses pertains to the following events in late July. It appears that a number of the striking nurses had written Respondent claiming the right to attend a public meeting scheduled to be held on Respondent's premises on August 5 by a representative of the Joint Commission on the Accreditation of Hospitals. In response, Respondent advised the strikers that, although they had chosen to withhold their services from the hospital, they could attend the Joint Commission meeting by presenting the letter sent each of them at the entrance designated in the letter.

10. The unemployment compensation claims

Respondent adduced evidence that a number of the striking employees had filed unemployment claims, and that, in doing so, they did not contend that they had been discharged by Respondent but rather they acknowledged that they were not working due to a labor dispute. Respondent also established that sometime in January 1981 a number of the nurses on strike wrote to Respondent and requested that payment in full be made to them on their accumulated fringe benefits and, on the basis of those letters, full payments of the accumulated benefits were made.

11. Analysis

Although the credited evidence established that Respondent had threatened not to take back to work any of the striking nurses, the fact is that it did, as at least two

[16] At the hearing the General Counsel had adduced evidence that certain other records had the letter "T" alongside the names of some strikers and that the "T" was a symbol indicating that they were terminated. Further examination of those records indicated that testimony was clearly erroneous and it appears that the General Counsel no longer relies on it as it was not referred to in the General Counsel's brief.

of the strikers returned to work without incident on July 12. It is true also that Lichtenstein was discriminatorily discharged on July 16, the same day that Stein had informed UPI reporter Logeman that the striking nurses would be fired. Nevertheless, the individual Jane Agola, who was the Local 803 steward, was informed that same day that Stein had reversed his position. It is also noted that Lichtenstein's discharge on July 16 occurred when she was considering resigning, and there is a question as to exactly how the strikers perceived her status. It also appears that Respondent's labor counsel had regular discussions with the press which indicated that replacements were being hired.

The General Counsel places considerable reliance on Respondent's notifying the strikers on July 16 that their benefits had ceased. That same announcement urges them to obtain their own coverage and the clear import of the message is that Respondent did not intend to aid them in their strike. This is clearly its right.[17]

The General Counsel also urges that the inclusion of unrequested pay for some accrued vacation and sick leave benefits and other benefits in checks issued or drawn on July 25 payable to the strikers demonstrated that they had been discharged. I can, however, discern no consistent pattern upon which I would draw that conclusion. The overall circumstances are too confusing. There were differences between what some of the strikers requested and what they received on July 25, and between the assertion by the General Counsel that "final" payments were made to 19 strikers on July 25 and the evidence that some of them received further unexplained payments later on. Further, the statements by some of the 19 that they were resigning their employment—one even set a September date therefor—suggest that they themselves did not view themselves as having been discharged earlier.

Similarly the General Counsel's reliance on the changes in the work schedules as maintained during the strike is not persuasive. Further, I see nothing destructive of employee rights under Section 7 of the Act in Respondent's having balanced the right of the nurses to attend the Joint Commission hearings on August 5 with its right to maintain order.[18]

All in all, there is an absence of persuasive evidence that Respondent pursued a course of conduct which would have led reasonably prudent striking employees to conclude that they had been discharged.[19] The General Counsel's alternate contention respecting the status of the striking nurses is discussed in the next section.

[17] *Trading Port, Inc.*, 219 NLRB 298, 299 at fn. 3 (1975). See also *General Electric Company*, 80 NLRB 510 (1948).

[18] The General Counsel asserts that this requirement was, in legal effect, identical to the acts whereby employees were held to have been discharged, as decided in *C & W Mining Co., Inc., and/or C & W Hauling Co., Inc.*, 248 NLRB 270 (1980), and in *B. N. Beard Company*, 248 NLRB 198 (1980). The facts in both of those cases are readily distinguishable from those in the instant case.

[19] See *Pink Supply Corporation, supra* for an analogous case, albeit a simpler one, factually. Insofar as Respondent's acts were ambiguous, at least in its dealings with Logeman, the testimony of its labor counsel and the admission in Agola's affidavit (that she had been informed that the strikers were not discharged but were being replaced) establish that such ambiguity was clarified and corrected.

F. *The Alleged Unfair Labor Practice Strike*

The General Counsel contends that the strike which began on July 11 had been caused and prolonged by Respondent's unfair labor practices. Respondent urges that the striking nurses have at all times been engaged in a purely economic strike and that there is no evidence to establish a causal nexus between the alleged unfair labor practices and the strike itself.

The applicable legal principle is clear. The General Counsel has the burden of proving that the strike was caused or prolonged in whole or in part by an unfair labor practice.[20]

There is no evidence that the coercive interrogation and related conduct engaged in by Respondent's supervisory staff between July 7 and July 11, as found above, materially affected the start of the strike. Rather, it appears that the start of the strike was related to the unresolved issues upon which Local 803 premised its notices, as required by Section 8(g) of the Act. That is not to say that the specific differences which led to the decision of the nurses to go on strike were purely economic. As is apparent from documents received in evidence, one of the basic underlying concerns of the nurses employed by Respondent in organizing for purposes of collective bargaining was their perception of unprofessional conduct accorded them by Respondent and its medical staff. The relevance of that observation is discussed below.

The critical issue is whether or not any of Respondent's unfair labor practices prolonged the strike. The record evidence discloses that at least one nurse consciously joined the strike after it had started. In that regard, I note that nurse Celeste Cornelia did so to protest specifically the coercive statements made by Respondent's administrator shortly after the strike had begun. Similarly, Veronica Lichtenstein joined the strike after she was discharged for having picketed in her off-duty hours. Further, the statements by Stein to UPI reporter Logeman to the effect that Respondent would not take back the striking nurses had the natural tendency to induce them to strengthen their resolve. Lastly, the slurs made by Respondent's administrator to and about Cornelia and Agola and the degrading references made by him were found above to constitute interference with employee rights protected by the Act. It is readily apparent that those slurs and personal references were not designed to allay the nurses' concern that they were not being accorded treatment by Respondent as professional members of its facility. Another of Respondent's officials, Bertha Meisner, made similar disparaging comments bearing on the nurses' aim to be shown deference accorded professional personnel. That concern was one of the basic reasons they struck. On the basis of the foregoing, I find that the strike was prolonged by reason of unfair labor practices by Respondent.

[20] *Associated Grocers*, 253 NLRB 31 (1980); *Citizens National Bank of Willmar*, 245 NLRB 389 (1979); *Larand Leisurelies, Inc.*, 213 NLRB 197 (1974).

G. *The Alleged Discriminatory Discharge of Dr. Pietro Agola and the Related Alleged Unlawful Interrogation*

The General Counsel contends that Respondent discharged Dr. Agola because his wife, Jane Agola, was president of the Association and because of her other protected activities. Respondent asserts that his discharge was dictated by considerations of health care alone.

Dr. Agola is a psychiatrist who worked for Respondent from 1965 to January 21, 1981. In that 16-year interval, he had worked 1 day a week for Respondent until 1977 or 1978 and 2 days a week from then and until January 1981 performing basically administrative duties. During that same interval and since, Dr. Agola has been employed, for the remaining 5 days a week, as a staff psychiatrist at another hospital not involved in this case.

Dr. Agola's supervisor had been Bertha Meisner, the assistant administrator of Brunswick Psychiatric Hospital, one of the hospitals that make up Respondent's complex. In 1977, at Dr. Agola's request, Meisner interviewed his wife, Jane Agola, and hired her as a staff nurse.

Since the early part of 1980, Jane Agola has been obviously active in union organizational efforts. Among other things, she served as a union observer at a Board-conducted election, had been shop steward, had been a member of Local 803's negotiating committee, took a leadership role in the conduct of the strike since its outset, wrote newspaper articles to express the nurses' views respecting the strike, was instrumental in forming the Association, and served as its president. (Local 803 had in November 1980 disclaimed interest in representing the nurses and the Association carried on the strike thereafter.)

The General Counsel asserts that, shortly after the strike had begun in July, Dr. Agola was subjected to coercive interrogation and related conduct which was violative of the Act.

Dr. Agola testified that, in the latter part of July, his supervisor, Meisner, asked him what his wife was doing to Respondent and that she wanted to know why his wife was so ungrateful. Meisner denied that she had any discussion with Dr. Agola respecting his wife around the time of the start of the strike. She further testified, however, that around the end of July 1980 she had told Dr. Agola that it was not a good recommendation for her that Jane Agola had gotten a job through her.

Dr. Agola testified that, several weeks after his first conversation with Meisner as related above, she asked him why the nurses wanted a union and she stated *inter alia* that "unions are crooks who are only after the dues" of the employees. Meisner, in her testimony, denied any such conversation. Instead, she related that Dr. Agola had volunteered to her that he was very embarrassed that his wife was on the picket line.

I credit Dr. Agola's accounts as Meisner's testimony was in part conflicting and confusing and in other parts improbable. With respect to the latter point, it seems unlikely to me that Dr. Agola would apologize to Mrs. Meisner for the conduct of his own wife.

Dr. Agola testified further that, later in the summer of 1980, Dr. Sidney Fried, chief of the psychology department at Respondent's Psychiatric Hospital, asked him what was going on and then told him that Meisner and Dr. Stein, Respondent's president, had wanted to terminate him, Dr. Agola. Dr. Agola testified that he guessed that Dr. Fried was referring to his wife's union activities as the basis for the assertion that Respondent wanted to terminate him. On cross-examination, Dr. Agola stated that he had assumed that that was what Dr. Fried had meant. On redirect, he stated that he did not simply assume what Fried had referred to but that Fried had in fact stated that Respondent intended to terminate him because of his wife's union activities. Dr. Fried denied having any such conversation with Dr. Agola and he also testified that he had had no discussions with Dr. Stein, Respondent's president, or with Meisner respecting their terminating the employment of Dr. Agola for his wife's activities on behalf of Local 803 or the Association. It is uncontroverted that Dr. Fried has no supervisory authority over Dr. Agola. Rather, their relationship is that of one existing between professional colleagues. I am unable to accept as credible the account of Dr. Agola as it seemed to be a combination of guesses, assumptions, and asserted direct quotations. On that premise, I accept the account of Dr. Fried as credible. In any event, there is no basis upon which I could attribute to Respondent the asserted statements of Dr. Fried as he possessed no supervisory authority over Dr. Agola. Dr. Agola's account of statements assertedly made by Dr. Fried, even if credited, would constitute uncorroborated hearsay evidence as to Respondent and, as such, it is entitled to no evidentiary weight.

Respecting Dr. Agola's discharge, the General Counsel adduced evidence, during the General Counsel's case-in-chief, that Dr. Agola had worked for Respondent in a routine manner, on Wednesday and Saturday of each week, for 16 years and that, on his first workday after his wife had been extensively quoted in the New York Times to the effect that the strike was far from over, he was discharged without warning. He testified that he was told that a discharge telegram had been sent to him but that he never received one and that his inquiries thereon to Western Union were met with disclaimers of knowledge of such a telegram. He testified that Meisner told him on January 21, 1981, that she did not want to talk to him about his discharge, that she had nothing to do with it and that he should talk to her son, who is president of Respondent.

Meisner testified for Respondent that she made the decision to discharge Dr. Agola because the administrative duties required of him had increased due to investigatory methods being pursued by the State of New York in documenting the types of treatments being given patients at Respondent's psychiatric hospital. She testified that she had in late 1980 asked Dr. Agola to work 3 days a week for Respondent to ensure that the records for which he was responsible were properly kept. (It appears that one of his principal functions was to ensure that records as to treatments given patients corresponded with records as to treatments prescribed and, if they did not, to procure promptly records explaining the variances.) Meisner testified that Dr. Agola had declined to

work for Respondent for more than 2 days. In that regard, I note as discussed above that he has worked full time for another hospital and obviously could not have accommodated such a request without changing his employment status at that other hospital. In any event, it is uncontroverted that, in late January 1981, Meisner obtained the services of a psychiatrist who has devoted 3 days a week to performing the administrative functions that Dr. Agola had been doing. It is also uncontroverted that the records he had maintained relate directly to inspections of Respondent's psychiatric hospital conducted by the State of New York and that there were deficiencies in these records. Meisner produced a copy of a report by Western Union that it had delivered a telegram sent to Dr. Agola in January 1981 by Respondent notifying him that his services were no longer needed. She also stated that she sent the telegram as she did not want to meet with Dr. Agola.

Dr. Agola did not testify to rebut the evidence adduced by Respondent respecting its reason for having terminated his services. The record testimony discloses that the General Counsel had made out a *prima facie* case that Respondent's termination of Dr. Agola's services was due to its expressed annoyances with the organizational efforts of Jane Agola. The hostility manifested towards those activities by Respondent, its none-too-subtle efforts to induce Dr. Agola to restrain his wife from continuing to pursue those activities, Meisner's statement that she had nothing to do with his discharge although she was his supervisor and the sudden, unexplained discharge of Dr. Agola warrant the inference that his discharge, after 16 years of dedicated service, was based on his wife's union activities. In my judgment, Respondent then came forward in its case and met its burden of rebutting that inference. I particularly note that Respondent now employs a psychiatrist on a 3-day-a-week basis and that he is performing the duties that Dr. Agola had been doing. Further, Dr. Agola's own schedule had been increased from 1 day a week to 2, in 1977 or 1978. The General Counsel attempted, by its cross-examination of Meisner, to establish that the status of the records kept by Dr. Agola was substantially the same in January 1981 as it had been in past years. At best from the General Counsel's standpoint, those efforts have raised some suspicions respecting the validity of the reason proffered by Respondent for discharging Dr. Agola. Those suspicions may have been confirmed by testimony of Dr. Agola respecting the significance of the reports he prepared and the materiality of variances among the underlying documents. In the absence of any rebuttal testimony from him or other countervailing evidence, I am most reluctant to find that the reason given by Respondent was a pretext, particularly as that would require me to infer that Respondent is now engaging a psychiatrist on an "extra day-make-work basis" and further that the corrections required by New York state investigators were no real significance. I find overall that the General Counsel has failed to establish that the reason given by Respondent for discharging Dr. Agola was pretextual.

I find, however, that the coercive statements made to him by Meisner in the summer of 1980 interfered with the rights guaranteed under Section 7 of the Act.

Upon the basis of the findings of facts above, including the analyses set out therein, and upon the entire record, I make the following:

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Local 803 and the Association are labor organizations within the meaning of Section 2(5) of the Act.

3. Respondent has committed unfair labor practices within the meaning of Section 8(a)(1) of the Act by:

(a) Having unlawfully interrogated employees respecting their intention to participate in a lawful strike.

(b) Having threatened to close its facility before it would take back to work any of the striking employees.

(c) Having threatened not to take back to work any of the striking employees.

(d) Having threatened employees with reduction in their work schedules and implicitly warned employees that they could lose their jobs if they took part in a lawful strike.

(e) Making disparaging remarks, including ethnic references and ridicule aimed at discouraging employees from engaging in activities protected by the Act.

(f) Photographing employees while they were engaged in activities protected by Section 7 of the Act since the strike began on July 11, 1980.

4. The General Counsel has failed to establish that Respondent in violation of Section 8(a)(1) of the Act promised and granted benefits to employees to discourage them from participating in the Local 803 strike or by the fact that statements made by its administrator on July 11 were overheard by a nonemployee.

5. Respondent has committed unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act by having on July 11, 1980, discharged Veronica Lichtenstein from its employ as a registered nurse because she participated in picketing with other nurses in the course of Local 803's strike.

6. The General Counsel has failed to establish that Respondent, in violation of Section 8(a)(1) and (3) of the Act, discharged strikers or discharged Dr. Pietro Agola to discourage employee activities for Local 803 or the Association.

7. The strike engaged in by nurses employed by Respondent was converted as of late July 11, 1980, to an unfair labor practice strike by reason of the unfair labor practices committed by Respondent which have prolonged the strike.

8. The unfair labor practices found above in paragraphs 3 and 5 affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) and also Section 8(a)(3), I shall recommend that it be ordered

to cease and desist therefrom and to take certain affirmative action to effectuate the purposes of the Act. Notwithstanding the serious violations found, I find that Respondent has not been shown to have exhibited such a proclivity to violate the Act as to warrant the issuance of a broad remedial order. Rather, an order requiring it to cease and desist from engaging in conduct like or related to that found violative should prove adequate as a deterrent.

Respondent should be ordered to destroy all photographic evidence it obtained by its unlawful surveillance.[21]

Respondent should be ordered to offer Veronica Lichtenstein reinstatement to her former position or, if such no longer exists, to a substantially equivalent position, without prejudice to her seniority and other rights and privileges, and to make her whole for any loss of earnings she may have suffered by reason of her discharge, by paying her a sum of money equal to that which she normally would have earned absent her discharge, less earnings during such period, with interest thereon, to be computed in the manner prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962), and *Florida Steel Corporation*, 231 NLRB 651 (1977).

The unfair labor practice strikers should be reinstated to their former jobs upon their unconditional offer to return to work and Respondent shall, if necessary, dismiss persons hired on and after July 11 as their replacements. If those jobs no longer exist, the unfair labor practice strikers should be reinstated to substantially equivalent positions without prejudice to their seniority and other rights and privileges.[22]

Backpay shall commence for each striker 5 days after he or she makes an unconditional offer to return to work. This provision is, however, subject to the *caveat* that if Respondent herein has already rejected or hereafter rejects, unduly delays, or ignores any unconditional offer to return to work, or attaches unlawful conditions to its offer of reinstatement, the 5-day period serves no useful purpose and backpay will commence as of the date of the unconditional offer to return.[23] Backpay shall be calculated in the same manner as that set out for Veronica Lichtenstein above.

Upon the basis of the foregoing findings of fact, conclusions of law, and the entire record in this proceeding and pursuant to the provisions of Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[24]

The Respondent, Brunswick Hospital Center, Inc., Amityville, New York, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Unlawfully interrogating employees as to their intent to participate in a lawful strike.

(b) Threatening to close its facility in order to discourage employees from participating in a lawful strike.

(c) Threatening not to reinstate striking employees to discourage them from continuing to participate in a lawful strike.

(d) Threatening employees with loss of employment or with reduced hours of employment to discourage them from participating in a lawful strike.

(e) Making disparaging comments which attempt to hold up to public ridicule employees who participate in a lawful strike.

(f) Photographing employees engaged in picketing activities.

(g) Discharging any of its employees because they participated in lawful picketing activities sponsored by a labor organization.

(h) Engaging in any like or related conduct which interferes with, restrains, or coerces employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Destroy all photographs and copies thereof (including both negatives and positives) taken by or on behalf of Respondent of all picket line activities since the inception of the strike on July 11, 1980.

(b) Offer to Veronica Lichtenstein reinstatement to her former position or, if it no longer exists, to a substantially equivalent position without prejudice to her seniority or her other rights and privileges and make her whole in the manner set out under the remedy section above, for all losses she incurred as a result of her discriminatory discharge on July 16, 1980.

(c) Reinstate each unfair labor practice striker within 5 days of an unconditional offer to return to work dismissing if necessary any employees hired in their respective places. In the event Respondent has already rejected, or hereafter rejects, unduly delays or ignores any unconditional offer to return to work or attaches unlawful conditions to its offer of reinstatement, backpay shall commence as of the date of the offer to return and shall be computed in the manner described in the remedy section above.

(d) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post at its Amityville, New York, hospital center copies of the attached notice marked "Appendix."[25]

[21] *United States Steel Corporation, supra.*

[22] Respondent asserted that employees who seek and accept payment of unused fringe benefits which would otherwise not be payable thereby have resigned from employment. The evidence at the hearing is inconclusive on that point and no definite policy seems to be in effect. In any event, that matter may require further litigation which may be had in a backpay proceeding.

[23] *Preterm, Inc., supra.*

[24] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order and all objections thereto shall be deemed waived for all purposes.

[25] In the event that this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Copies of said notice, on forms provided by the Regional Director for Region 29, after being duly signed by a representative of Respondent, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director for Region 29, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS HEREBY FURTHER ORDERED that the allegations of the consolidated complaint that Respondent violated Section 8(a)(1) of the Act by having promised and granted benefits to employees to induce them not to participate in a lawful strike, that it violated Section 8(a)(1) and (3) of the Act by having discharged all striking employees and by having discharged Dr. Pietro Agola to discourage his wife's activities, including those as president of the Brunswick Nurses Association, are dismissed.[26]

[26] The statements made by Jules Klein which were overheard by detective Emery Schneider do not appear to be within the scope of the specific allegations of the complaint and hence no specific dismissal order thereon is required.